

(77)

HIGH COURT OF CHHATTISGARH AT BILASPUR

First Appeal No. 38/2006

Chhattisgarh State Electricity Board

Vs.

Smt. Vijay Laxmi Suryawanshi

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Post for: 14-03-2007

**Sd-/
Dilip Raosaheb Deshmukh
Judge**

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal No. 38/2006

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

APPELLANT : Chhattisgarh State Electricity Board,
DEFENDANT Through, the Executive Engineer (O & M),
C.S.E.B., Tifra, Bilaspur (C.G.)

Versus

RESPONDENTS : 1) Smt. Vijay Laxmi Suryawanshi,
W/o Late Ashok Kumar Suryawanshi,
Aged about 30 years,
R/o Manjhwapara, Jarha Bhata,
Bilaspur (C.G.).
: 2. Ku. Chandra Kali,
D/o Late Ashok Kumar Suryawanshi,
Aged about 12 years,
: 3. Amit Kumar,
S/o Late Ashok Kumar Suryawanshi,
Aged about 7 years.
: 4. Ku. Jaya, D/o Late Ashok Kumar
Suryawanshi, Aged about 5 years,
: 5. Ku. Nidhi, D/o Late Ashok Kumar
Suryawanshi, Aged about 3 Years,
Respondent Nos. 2 to 5 all minors through
Their natural guardian-Mother:- Smt. Vijay
Laxmi Suryawanshi, W/o Late Ashok Kumar
Suryawanshi R/o Manjhwapara, Jarha
Bhata, Bilaspur (C.G.).

Present:
Shri A.S. Gaharwar, learned counsel for the appellant.
Shri Manoj Mishra, counsel for the respondents

JUDGMENT

(Passed on this 14th day of March, 2007)

The following judgment of the Court was passed by Dilip Raosaheb Deshmukh, J.

The appellant/respondent is aggrieved by the judgment and decree dated 28.10.2005 passed in Civil Suit No. 4-B/2004 by the III Additional District Judge, Bilaspur whereby compensation of Rs. 2,63,000/- with interest @ 7% per annum was awarded to the Legal Representatives of

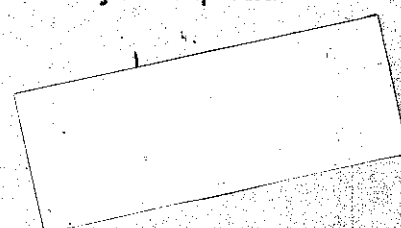
the deceased who was electrocuted due to coming in contact with live earthing wire on 25.07.2002.

2. Brief facts as pleaded by the respondents/plaintiffs are that on 25.7.2002, Ashok Kumar Suryawanshi while cleaning the "Nali" of the house at 9.00 A.M. got in contact with an earthing wire, was electrocuted and died. It was pleaded that the death occurred due to negligence of the appellant/defendant. Compensation of Rs.5,95,000/- was claimed.

3. The appellant/defendant resisted the suit on the ground that upon an enquiry it was divulged that the accident had occurred due to the negligence of one Lala Ram in whose house, the earthing put by the appellant/defendant had broken. It was also contended that Lala Ram was a necessary party in the suit, since there was no negligence whatsoever on the part of the appellant/defendant.

4. During the course of arguments, Shri A.S. Gaharwar, learned counsel for the appellant prayed that Lala Ram was a necessary party in the suit since it was due to his negligence that the deceased came in contact with the live earthing wire. It was contended that on this ground alone, this appeal should be allowed and the matter be remanded to the Court below with a liberty to the respondents/plaintiffs to implead Lala Ram as defendant. It was further contended that once the earthing wire was properly installed by the appellant, under Rule 33(2) of the Indian Electricity Rules, 1956, it was solely the responsibility of the consumer to ensure proper maintenance thereof.

5. Shri Manoj Mishra, learned counsel for the respondents/plaintiffs conceded that in view of the detailed submissions and affidavit filed by the defendants, Lala Ram was a necessary party since the live earthing wire which was broken was belonged to the house of lala Ram. It was contended that Lala Ram could not be impleaded as defendant in the lower Court since the facts divulged in the affidavit of Shri P.L. Sidar, Assistant Engineer, C.S.E.B., Bilaspur were not in the knowledge of the widow of the deceased. Learned counsel for the respondents/plaintiffs prayed that the respondents/plaintiffs be given an opportunity to implead Lala Ram as a party in the suit.



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6. Having heard the rival contentions, I have perused the record. I have also perused rule 33(2) of the Indian Electricity Rules, 1956 which is as under:

"33 Earthed terminal on consumer's premises.-

(1) -----X-----X-----X-----

(2) The consumer shall take all reasonable precautions to prevent mechanical damage to the earthed terminal and its lead belonging to the supplier".

In view of the detailed affidavit filed by Shri P.L. Sidar, Assistant Engineer, C.S.E.B., Bilaspur and submissions of the learned counsel, it appears necessary that for the just and proper adjudication of the claim of compensation Lala Ram is impleaded as a party to the suit. In this view of the matter, the appeal is allowed. The impugned judgment and decree is set aside. The matter is remanded to the learned III Additional District Judge, Bilaspur for affording an opportunity to the plaintiffs to implead Lala Ram as defendant and also to amend the pleadings. The learned III Additional District Judge shall thereafter expeditiously proceed to decide the suit afresh in accordance with law, preferably within six months from the date of receipt of this order and the records of Civil Suit No. 4-B/2004.

Kvr

Sd-/
Dilip Raosaheb Deshmukh
Judge